Dato' Jaffar bin Mohd Ali & Anor v Jasatera Bhd & Ors (Public Bank Bhd, Intervener)

HIGH COURT (SHAH ALAM) — CIVIL SUITS NO 22–438 OF 1999, NO 22–824 OF 1999 AND NO 22–826 OF 1999
SURIYADI J
26 JULY 2002

Civil Procedure *— Judgments and orders — Clarification of order of court — Resolutions by company inter alia removing board members — Injunction by Court of Appeal injuncting such resolutions — Company resolution as to change of bank account signatories prior to Court of Appeal's injunction — Bank instructed to give effect to resolutions and warned not to act contrary to the instructions — Whether bank should follow instructions of first defendant and risk the possibility of contempt proceedings — Whether bank should instead adhere to the Court of Appeal's decision and risk being liable for any losses accrued in not following first defendant's instructions — Whether Court of Appeal's order retrospective in effect*

The intervener had provided banking facilities in the form of a current account to the first defendant. To ensure the smooth operation of that account, only the directors of the first defendant were allowed to operate it prior to 31 December 1998. On 31 December 1998, a few resolutions were passed ('the relevant resolutions') by the board of directors of the first defendant resolving, inter alia, that the second plaintiff be removed from the board. The sixth defendant was approved as the new executive director. Being dissatified with their removal, the plaintiffs prayed for an interim injunction that the relevant resolutions be injuncted. The Court of Appeal granted them the interim injunction. In the meantime, prior to the Court of Appeal's decision, by a circular resolution, it was resolved that changes be made to the signatories of the account. The changes, which discarded the evicted directors as co-signatories, were transmitted to the intervener. The intervener was given ample warning not to act contrary to the instructions. The Court of Appeal's decision, unfortunately never adverted to specific words in the like of 'retrospective', but as the relevant resolutions had been injuncted, and some status quo impression could be perceived and read into it, conflicting interpretations ensued. The intervener, being in a dilemma, as to whether to follow the instructions of the first defendant and risk the possibility of contempt proceedings; or to adhere to the Court of Appeal's decision and risk being liable to any losses accrued in not following the first defendant's instructions, filed encl 74 to ask for, inter alia, clarifications and/or instructions from the High Court.

Held:

(1) Indisputably, the defendants were the ones named and injuncted as per the order, from implementing the impugned resolutions passed on 31 December 1998 and with no mention of the intervener in it. With full implementation of that order, the new

signatories would be prevented from operating the current account in the intervener's bank. Yet if as a third party, the intervener were to knowingly and deliberately obstruct or interfere in the administration of justice, in the like of permitting the operation of the accounts by those new signatories, thus breaching the impugned order, it would be held liable for contempt (see p 212D–F).

(2) Without the necessity of having to decide whether the Court of Appeal's order was retrospective or not, the very effect of the words adverted to which were unambiguous, followed by its logical construction, also showed that the order was retrospective in effect (see p 212G).

[Bahasa Malaysia summary

Pencelah telah memberikan kemudahan kewangan dalam bentuk satu akaun semasa kepada defendan pertama. Bagi memastikan pengurusan lancar akaun tersebut, hanya pengarah-pengarah defendan pertama dibenarkan untuk menguruskannya sebelum 31 Disember 1998. Pada 31 Disember 1998, beberapa resolusi telah diluluskan ('resolusi-resolusi yang relevan') oleh lembaga pengarah defendan pertama yang memutuskan, antara lain, agar plaintif kedua disingkir daripada lembaga. Defendan keenam telah diluluskan sebagai pengarah eksekutif baru. Disebabkan tidak puas hati dengan penyingkiran mereka, plaintif-plaintif telah memohon untuk satu injunksi interim agar resolusi-resolusi yang relevan disekat. Mahkamah Rayuan telah memberikan mereka injunksi interim tersebut. Sementara itu, sebelum keputusan Mahkamah Rayuan, melalui satu resolusi pekeliling, ia telah diputuskan bahawa pertukaran dibuat ke atas penandatangan-penandatangan akaun tersebut. Pertukaran tersebut, yang mengenepikan pengarah-pengarah yang disingkir tersebut sebagai penandatangan bersama, telah diserahkan kepada pencelah. Pencelah telah diberikan amaran sewajarnya supaya tidak bertindak bertentangan dengan arahan tersebut. Keputusan Mahkamah Rayuan, malangnya, tidak merujuk kepada perkataan-perkataann khusus seperti 'retrospective', tetapi memandangkan resolusi-resolusi yang relevan tersebut telah disekat, dan beberapa tanggapan status quo dapat dilihat dan dibaca melaluinya, terdapat tafsiran-tafsiran yang bercanggah. Pencelah, yang berada dalam dilema, tentang sama ada untuk mematuhi arahan-arahan defendan pertama dan menghadapi risiko kemungkinan penghinaan prosiding; atau untuk mematuhi keputusan Mahkamah Rayuan dan menghadapi risiko bertanggungjawab untuk apa-apa kerugian yang dialami jika tidak mematuhi arahan-arahan defendan pertama, telah memfailkan lampiran 74 untuk memohon, antara lain, penjelasan-penjelasan dan/atau arahan-arahan daripada Mahkamah Tinggi.

Diputuskan:

(1) Tidak dapat dipertikaikan lagi bahawa defendan-defendan adalah mereka yang dinamakan dan dihalang seperti dalam perintah daripada melaksanakan resolusi-resolusi yang dipersoalkan yang telah diluluskan pada 31 Disember 1998 dan pencelah tidak disebut di dalam perintah tersebut. Dengan pelaksanaan sepenuhnya perintah tersebut, penandatangan-penandatangan baru tersebut akan dihalang daripada menguruskan akaun semasa dalam bank pencelah. Malahan, jika seperti satu pihak ketiga, pencelah dianggap mengetahui dan dengan sengaja menghalang atau campur tangan dalam pentadbiran keadilan, seperti membenarkan pengurusan akaun oleh penandatangan-penandatangan baru tersebut, dengan itu melanggar perintah yang dipersoalkan, ia akan dipertanggungjawabkan kerana penghinaan (lihat ms 212D–F).

(2) Tanpa keperluan untuk memutuskan sama ada perintah Mahkamah Rayuan adalah kebelakangan atau tidak, kesan perkataan-perkataan yang digunakan adalah jelas, ditambah pula dengan pembentukannya yang logikal, menunjukkan bahawa perintah tersebut mempunyai kesan kebelakangan (lihat ms 212G).]

Notes

For cases on clarification of order of court, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 3461–3462.

Cases referred to

Attorney General v Observer Ltd and another action; Re an application by Derbyshire County Council [1988] 1 All ER 385 (refd)

Attorney General v Times Newspaper Ltd & Anor [1991] 2 All ER 398 (refd)

Dato' Jaafar bin Mohd Ali & Anor v Jasatera Bhd & Ors [2000] 2 MLJ 277 (refd)

Marengo v Daily Sketch and Sunday Graphic Ltd [1948] 1 All ER 406 (refd)

Seaward v Paterson (1897) 1 ChD 545 (refd)

Kulasegaran (*Anita Kulasegaran* with him) (*Ranjit Thomas & Kula*) for the plaintiff.

VL Yiew (*NY Ngeow* with him) (*Loke & Assoc*) for the defendant.

Benjamin Dawson (*Edwin Narvis* with him) (*Nik Hussain & Partners*) for the intervener.

Suriyadi J: The intervener, a bank, had provided banking facilities in the form of a current account (account number 3-0684060-21) to a company, ie the first defendant ('the first defendant'). To ensure the smooth operation of that account, only identifiably permitted personalities were allowed to

operate it, in particular the directors of the first defendant, prior to 31 December 1998. The latter date is of significance to the current application as the evidence revealed that on the very day of 31 December 1998, a few resolutions ('the relevant resolutions') were passed by the board of directors of the first defendant resolving, inter alia, that the second plaintiff and another gentlemen by the name of Tan Seng Chai, be removed from the board. Apart from the above resolutions, a person by the name of Wong Chee Beng, the sixth defendant, was also approved as the new executive director. For purposes of this application, those are the relevant factual matrices as regards the resolutions.

Being dissatisfied with their removal, the plaintiffs took the matter to the High Court, praying for an interim injunction that the relevant resolutions of 31 December 1998 be injuncted. Unfortunately, the plaintiffs lost and the matter went up to the Court of Appeal. On 2 November 2001, after having heard submissions from all the contending parties, it reversed the decision of the High Court, and accordingly granted the much sought after interim injunction (see *Dato' Jaafar bin Mohd Ali & Anor v Jasatera Bhd & Ors* [2000] 2 MLJ 277). I herewith reproduce the relevant portion of the order for better appreciation of the problem:

> DAN ADALAH DIPERINTAHKAN SELANJUTNYA bahawa suatu injunksi interim dibenarkan untuk menyekat responden-responden daripada menguatkuasakan resolusi-resolusi bertarikh 31 Disember 1998.
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> (interpretation — AND IT IS ALSO ORDERED that an interim injunction is granted to prevent the respondents from enforcing the resolutions of 31 December 1998...).

It transpired that much earlier, sometime on 2 November 1999 and 20 January 2000, but prior to the Court of Appeal's decision, by a circular resolution it was resolved that changes be made to the signatories of the account. When the changes were initiated, the second plaintiff and the said Tan Seng Chai were not present at that meeting. The changes were later transmitted to the intervener bank vide a letter dated 13 March 2000, which discarded the previous evicted directors as co-signatories, and at the same time giving ample warning to the intervener not to act contrary to instructions. The Court of Appeal's decision thus was pronounced after much water had gone under the bridge (see above). The court's order unfortunately never adverted to specific words in the like of 'retrospective', but as the relevant resolutions had been injuncted, and some status quo impression could be perceived and read into it, conflicting interpretations ensued.

The defendants interpreted the Court of Appeal's order, inter alia, as not having any retrospective effect, and that the issue of the relevant resolutions in relation to the impugned order, did not affect the operation of the account. That being so, the intervener, being their banker, had no alternative but to accept the new signatories and to carry on business as usual. In the event of any refusal to comply with the orders of the new board of directors, and if losses were to accrue, the intervener would be held liable. The intervener, in turn, had ventilated that as the interim order of the Court

of Appeal had injuncted the resolutions of 31 December 1998, it thus was prevented from acknowledging the new signatories. Together with the plaintiffs, both holding a view that was diametrically opposed to that of the defendants, the intervener advocated that any detraction from the Court of Appeal's order by the intervener, could expose the latter to possible contempt proceedings.

Due to the divergence of interpretations arrived at by the defendants and the intervener, and with the latter being stumped as to what course of action to undertake, the filing of encl 74 was undertaken. On 15 July 2002, I heard the abovementioned enclosure, with particular reference to prayer (3). The untranslated version reads as follows:

> BENARKAN SEMUA PIHAK yang berkenaan hadir di hadapan hakim dalam kamar pada 3 Julai 2000 pukul 9 pagi untuk mendengar permohonan bagi pihak pencelah yang dicadangkan yang bernama di atas di bawah A 15 k 6(2)(b) Kaedah-kaedah Mahkamah Tinggi 1980 dan juga bidangkuasa mahkamah yang sedia ada, untuk perintah-perintah seperti berikut:
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> (1) ...
>
> (2) ...
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> (3) penjelasan dan/atau arahan daripada mahkamah yang mulia ini berkenaan dengan kesan dan implikasi perintah tersebut khususnya, memandangkan injunksi yang diberikan, sama ada defendan-defendan atau mana-mana daripada mereka dihalang daripada mengeluarkan sebarang mandat/arahan berkenaan dengan operasi dan penandatangan-penandatangan diberi kuasa defendan pertama bagi akaun semasa bernombor 3–0684060–21 ('akaun tersebut') yang dibuka dengan pencelah yang dicadangkan di bawah nama defendan pertama, selain daripada mandat/arahan defendan pertama yang wujud atau berkuatkuasa sebelum 31 Disember 1998;

After hearing the submissions of the intervener and the defendants (the plaintiff supporting the intervener), I went along the way of the intervener. I was in tandem with the stance of the latter, as the consequential effect of the Court of Appeal's order must necessarily follow that the status quo remain. Any substantively connected matter in the like of the running of the account must likewise remain unchanged, in that it could only be operated with the participation of the old co-signatories. I was satisfied that, that expectation must have been uppermost in the mind of the Court of Appeal, until the whole matter had been resolved by a full hearing.

Trapped in such an unhappy predicament, where rival constructions prevailed and the unfortunate intervener caught in between, it certainly must be quite anxious to extricate and distance itself from the mess created by others. If it were to disregard the instructions of the defendants, and debilitating losses follow in its wake due to the non-adherence of the instructions, the latter would certainly hold the intervener liable as promised. On the other hand, it would be quite foolhardy for the intervener to jeopardize its position by defying the Court of Appeal's order, as any miscalculation will not only attract the full wrath of the plaintiffs, but also the court. Anyone who interferes with the administration of justice, eventhough not named in an order meant for identified parties, may be

guilty of contempt (*Attorney General v Times Newspaper Ltd & Anor* [1991] 2 All ER 398; *Attorney General v Observer Ltd and another action; Re an application by Derbyshire County Council* [1988] 1 All ER 385; *Marengo v Daily Sketch and Sunday Graphic Ltd* [1948] 1 All ER 406). A

In *Seaward v Paterson* (1897) 1 ChD 545, Lindley LJ, when committing a person for contempt, even though not bound by an injunction, had occasion to state: B

> He is bound like other members of the public, not to interfere with, and not to obstruct the course of justice; and the case, if any, made against him must be this, not that he has technically infringed the injunction, which was not granted against him ... but that he has *been aiding and abetting others* in setting the court at defiance, and deliberately treating the order of the court as unworthy of notice. (Emphasis added.) C

In England, as established by the above case, historically therefore a third party could be held liable for contempt if they aided and abetted in the breach of the relevant injunction. Now the law, as propounded by the case of *Attorney General v Times Newspaper Ltd & Anor*, took a giant step forward when it expounded that in relation to the terms of the injunction, it was contempt of court if one were to knowingly impede or hinder the administration of justice. Certainly, this progressive view had cast quite a wide net. D

Indisputably, the defendants were the ones named and injuncted, as per the order, from implementing the impugned resolutions passed on 31 December 1998 and with no mention of the intervener in it. Certainly too with full implementation of that order, the new signatories would be prevented from operating the current account in the intervener's bank. Yet if as a third party, the intervener were to knowingly and deliberately obstruct or interfere in the administration of justice in the like of permitting the operation of the accounts by those new signatories, thus breaching the impugned order, it will be held liable for contempt. Positioned in such an unenviable dilemma, it is absolutely legitimate for an interested party, in the like of the intervener, to come before the court for directions and ascertain the correct interpretation of that order. E F

Without the necessity of having to decide whether the Court of Appeal's order was retrospective or not, the very effect of the words adverted to which were unambiguous, followed by its logical construction, also showed that the order was retrospective in effect. As the language employed in the order was unambiguous and explicit, it was incumbent upon me to give effect to its literal meaning regardless of the consequence, even though mindful that the defendants would be the eventual displeased party. G H

Based on the above grounds, I had ordered 'order in terms' to prayer three of encl 74, with costs to be paid by the eventual loser of the substantive trial. Effectively, with my pronouncement of 'order in terms' to the application, it followed that the: I

(i) defendants were restrained from enforcing the resolutions of 31 December 1998;

(ii) status quo of the board of directors of the first defendant had to be maintained as at immediately prior to 31 December 1998;

(iii) appointment of the sixth defendant must be stayed;

(iv) inclusion of the sixth defendant as the new co-signatory of the account was thus ineffectual;

(v) the original signatories of the board of directors were restored; and

(vi) the account could only be operated with the concurrence of the old signatories.

Order accordingly.

Reported by Zahid Taib